Supreme Court U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2001

In re Isidoro Rodriguez, Esq., Petitioner

PETITION FOR WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, Alexandria Division

PETITION FOR WRIT OF MANDAMUS

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER IN THIS DIVERSITY OF CITIZENSHIP ACTION FILED PURSUANT TO 28 U.S.C.§ 1332(a)(3) , THE FEDERAL COURTS OF THE FORTH CIRCUIT VIOLATED THE "FULL FAITH AND CREDIT CLAUSE" OF THE CONSTITUTION AND 28 U.S.C. § 1738, BY REPEATEDLY AND INTENTIONALLY REFUSING TO GIVE FULL FAITH AND CREDIT TO AND COMPLY WITH A VIRGINIA BAR LEGAL ETHICS OPINION, VIRGINIA SUPREME COURT PRECEDENT, THE VIRGINIA CODE'S LONG ARM AND ATTORNEY'S LIEN STATUTES, AND THE CIRCUIT'S OWN PRECEDENT, SO TO NOT ENFORCE AND PROTECT FROM TORTUOUS ACTS MR. RODRIGUEZ, ESQ.'S VIRGINIA ATTORNEY LIEN BASED ON HIS PROVIDING *PRO HOC VICE* CONTRACT LITIGATION AND FIDUCIARY SERVICE WHILE "ENGAGED IN THE PRACTICE ELSEWHERE" OUTSIDE OF VIRGINIA?

LIST OF PARTIES

Mr. Isidoro Rodriguez, Esq.-Petitioner, (Mr. Rodriguez, Esq.), is a U.S. citizen by birth, Member of the Virginia State Bar, the Bars of the United States District Court for the Eastern District of Virginia, and the United States Court of Appeals for the Fourth Circuit.

The Honorable Judge J. Michael Luttig, The Honorable Judge Diana Gribbon Mortz, and The Honorable Judge Robert B. King of United States Court of Appeals for the Fourth Circuit-Respondents

The Honorable District Court Judge James C. Cacheris, The Honorable District Court Judge Gerald Bruce Lee, and The Honorable District Court Magistrate Judge Theresa Carroll Buchanan, of the United States District Court for the Eastern District of Virginia, Alexandria, Virginia-Respondent

Presidencia de La Republica de Colombia
Bogota, Colombia, Opposing party in *Sea Search Armada vs. President of the Republic of Colombia*, Superior 3rd Judicial District of Barranquilla

Mr. Danilo Devis Pereira,
Defendant/Appellee
Attorney/Agent of Mr. Rodriguez, Esq.

Mr. R. Harrison Pledger, Jr.
Counsel for Defendant/Appellees Jack Harbeston, Sea Search Armada, Armada Company, and IOTA Partners ("SSA Group")[1]

SSA Group are the claimants to over seven treasure trove targets sunk off the Republic of Colombia ("Colombia"), that are valued at $1.5 to $10 Billion, and are the subject of contract litigation against Colombia which Mr. Rodriguez, Esq., has provided litigation management service since September, 1988. This litigation has been described by Congressman Dan Burton, and other U.S. Congressmen as the " . . . largest private [contract] claim by American citizens against a foreign state pending in the world . . . . "

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CITATIONS TO OPINIONS BELOW

Virginia Bar Legal Ethics Opinion #1325, dated February 27, 1990, issued to Mr. Rodriguez Esq.,[2] is reproduced in the appendix a A-3.[3]

The Judgements of the United States Court of Appeal for the Fourth Circuit No. 01-1884 are unpublished. but are reproduced in the appendix to this petition respectively at A-8.

The Orders and Memorandums of the United States District Court for the Eastern District of Virginia, Alexandria Division, No. 00CV1523-A, are unreported, but are reproduced in the appendix to this petition respectively at A-13.

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[2] Pursuant to Virginia Code § 54.1-3932 and § 54.1-3910. The Virginia Bar Committee held that,

. . . [Mr. Rodriguez, Esq. being] admitted to practice in Virginia is subject to the Virginia Code of Professional Responsibility although engaged in practice elsewhere. . . when [he] assumes the responsibility of acting as a fiduciary . . . As such Mr. Rodriguez, Esq.'s suit for Attorney fees is permissible.

Upon SSA Group being notified of the VA Bar Ethics Opinion, they reformed the Hourly Retainer Agreement to a superceding 10% Contingency Fee Agreement to pay for Mr. Rodriguez, Esq. past services and assure his fiduciary and management services as a Virginia active Attorney.

[3] "A-" references are to pages in the Joint Appendix.

STATEMENT OF JURISDICTION

Mr. Rodriguez, Esq. requests and seeks the U.S. Supreme Court in its supervisory capacity of the federal circuits issue a writ of mandamus to both Respondent Judges of the United States Court of Appeals for the Fourth Circuit, and the Respondent Judges of the United States District Court for the Eastern District of Virginia, Alexandria Division pursuant to 28 U.S.C. § 1651(a), directing them provide a full, fair and meaningful hearing so to grant "full faith and credit" to and comply with Virginia Bar Legal Ethics Opinion, Virginia Supreme Court precedent, and Virginia Code, as well as the Fourth Circuit's own precedent regarding the priority, protection, and enforcement of a Virginia Attorney's Lien. These Courts of Fourth Circuit have repeatedly disregarded the mandate of 28 U.S.C. § 1738, by refusing to provide any full, fair, and meaningful hearing to Mr. Rodriguez, Esq., on the key gravamen of the Complaint–the enforcement of rights under the Virginia Bar Legal Ethics Opinion #1325, dated February 27, 1990, and Virginia's controlling precedent of the Supreme Court of Virginia in *Hughes v. Cole* 251 Va. 3 at 27(1996), and Virginia Code §8.01-328.1 (A)(1) and (4), §54.1-3932. Thus the relief sought the giving of full faith and credit to Virginia Bar Ethics Opinion, Virginia Supreme Court precedent, and Virginia Code, cannot be obtained in any other court in the States of Washington, Idaho, or the District of Colombia based on this Court's holding in *Baker by*

Thomas v. General Motors Corp., 522 U.S. 222, 232 (1998).

CONSTITUTIONAL, FEDERAL AND VIRGINIA STATUTORY PROVISIONS INVOLVED

FULL FAITH AND CREDIT CLAUSE:
Article IV, Section 1 (A-1)

FULL FAITH AND CREDIT FEDERAL STATUTE
28 U.S.C.A. § 1738 (West 2000) (A-1)

VIRGINIA STATUTES CITED:
Virginia Code § 54.1-3932. Lien for fees (A-1).

Virginia Code § 54.1-3910. Organization and government of Virginia State Bar (A-1).

Virginia Code § 8.01-328.1.(1) and (4) (A-1).

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

This action was filed on September 12, 2000, by Mr. Rodriguez, Esq. to enforce and protect his Virginia Attorney's Lien under Virginia Code §54.1-3932, pursuant to diversity of citizenship under 28 U.S.C. §

1332, in the United States District Court for the Eastern District of Virginia, Alexandria.

On December 21, 2000, in an unpublished decision the Honorable James C. Cacheris, without considering either the Virginia Bar Legal Ethics Opinion, or Virginia Supreme Court precedent, or Virginia Code, or the E.D. of Virginia's own precedent, stated from the bench that Mr. Rodriguez, Esq.'s Virginia State Bar affiliation alone was not sufficient connection to establish the Court's personal jurisdiction over the defendants SSA Group, granted all four of the their motions to dismiss without prejudice, thereby leaving Danilo Devis Pereira ("Devis"), as the sole remaining defendant in this case.

On January 16, 2001, Mr. Rodriguez, Esq. filed an interlocutory appeal with the United States Court of Appeals for the Fourth Circuit, Docket Number 01-1129, of the December 20, 2001 order, based on the Honorable Judge James C. Cacheris failure to comply with the full faith and credit requirement of both the Constitution and 28 U.S.C. § 1738, and thus failed to provide a fair, full, and meaningful hearing regarding rights based on Mr. Rodriguez, Esq.'s Virginia Bar Legal Ethics Opinion, Virginia Supreme Court precedent, Virginia Code § 54.1.3932, and the U.S. District Court, E.D. of Virginia's own precedent.

On April 25, 2001, the Honorable District Court Magistrate Judge Theresa Carroll Buchanan, issued a Report and Recommendation, which ignored the

superseding contingency fee contract of December, 1990, failed again to provide full faith and credit to Mr. Rodriguez, Esq.'s Virginia Bar Legal Ethics Opinion (A-3), Virginia Supreme Court precedent, Virginia Code § 54.1.3932, and the U.S. District Court, E.D. of Virginia's own precedent, recommending dismissing the Complaint. On May 3, 2001, Mr. Rodriguez, Esq. filed Exceptions to Report and Recommendation focused on the denial of full faith and credit to Mr. Rodriguez, Esq.'s Virginia Bar Legal Ethics Opinion (A-), Virginia Supreme Court precedent, Virginia Code § 54.1.3932, and the U.S. District Court, E.D. of Virginia's own precedent.

On May 14, 2001, in an unpublished decision the Honorable Judge J. Michael Luttig, The Honorable Judge Diana Gribbon Mortz, and The Honorable Judge Robert B. King of United States Court of Appeals for the Fourth Circuit-Respondents, issued an order dismissing the Interlocutory Appeal.

On May 22, 2001, Mr. Rodriguez, Esq. filed a Petition for Rehearing En Banc, based on the failure again to provide full faith and credit to the controlling effect of the Virginia Bar's Legal Ethics Opinion, Virginia Supreme Court precedent, Virginia Code, and the precedent of the Fourth Circuit regarding the enforcement and protection of a Virginia Attorney's Lien.

Also on May 22, 2001, Mr. Rodriguez, Esq. filed with the United States Court of Appeals for the Fourth Circuit, a Petition for Writ of Mandamus, Docket Number 01-1671, directed to the Honorable Judge James C. Cacheris, to provide full faith and credit to Mr. Rodriguez, Esq.'s Virginia Bar Legal Ethics Opinion (A-23), Virginia Supreme Court precedent, Virginia Code § 54.1.3932, and the U.S. District Court, E.D. of Virginia's own precedent, by providing a full, fair, and meaningful hearing on these Virginia based claims.

On June 5, 2001, in an unpublished decision the Honorable District Court Judge Gerald Bruce Lee, dismissed the Complaint without prejudice (but in dicta and without citation foreclosed the amending and refilling of the Complaint in Virginia by "finding that amendment to the complaint will not cure the jurisdictional deficiency" (A-13), as to the remaining defendant Danilo Devis Pereira, and again failed to provide either a full, fair, and meaningful hearing on the main gravemen of the Compliant, or full faith and credit to Mr. Rodriguez, Esq.'s Virginia Bar Legal Ethics Opinion , Virginia Supreme Court precedent, Virginia Code § 54.1.3932, and the U.S. District Court, E.D. of Virginia's own precedent.

On June 12, 2001, in an unpublished decision the Honorable Judge Michael, with the concurrence of the Honorable Judge Williams and Judge Motz, denied the Petition for a Writ of Mandamus seeking full faith

and credit of Virginia precedent and Virginia Code. On June 19, 2001, Mr. Rodriguez, Esq. filed a Petition for Rehearing En Banc of the Panel's dismissal, and failure to provide full faith and credit to laws of Virginia regarding the priority of a Virginia Attorney's Lien.

On June 13, 2001, Mr. Rodriguez, Esq. filed a Petition for Writ of Mandamus with the United States Court of Appeals for the Fourth Circuit Docket Number 01-1774, based on the denial of a full, fair, and meaningful hearing by the lower court, and the denial of full faith and credit of Virginia precedent and Virginia Code. On June 19, 2001, Mr. Rodriguez, Esq. filed a Petition for Rehearing En Banc of the Panel's dismissal, and failure to provide full faith and credit to laws of Virginia.

On June 19, 2001, in Docket Number 01-1129, in an unpublished decision the petition for rehearing en banc for non-compliance with the full faith and credit clause was denied.

On July 24, 2001, in an unpublished decision the Petition for Rehearing En Banc was denied as to Docket Number 01-1671

On June 25, 2001, a timely Notice of Appeal was filed with the United States Court of appeals for the Fourth Circuit Docket Number 01-1884, of the orders of December 21, 2000 issued by the Honorable Judge James C. Cacheris and the order of June 5, 2001, of the

Honorable Gerald Bruce Lee, for failure to provide full faith and credit of Virginia precedent and Virginia Code in accordance with the Constitution and 28 U.S.C. § 1738.

On July 26, 2001, in an unpublished decision the Petition for a Writ of Mandamus as to Docket Number 01-1774, was denied by the Honorable Judge J. Michael Luttig, The Honorable Judge Diana Gribbon Mortz, and The Honorable Judge Robert B. King of United States Court of Appeals for the Fourth Circuit-Respondents, again without dealing with the denial of full faith and credit of Virginia law regarding the priority of a Virginia Attorney's Lien.

On October 29, 2001, as to Docket Number 01-1884, Mr. Rodriguez, Esq. filed with the United States Court of Appeals for the Fourth Circuit, a Motion for Certification of Question of Virginia Law to the Supreme Court of Virginia.

On November 28, 2001, in an unpublished decision, the Honorable Judge J. Michael Luttig, The Honorable Judge Diana Gribbon Mortz, and The Honorable Judge Robert B. King of United States Court of Appeals for the Fourth Circuit-Respondents, again without dealing with the denial of full faith and credit of Virginia law, denied the Motion for certification of the question to the Supreme Court of Virginia, and affirmed the lower Court in all aspects without oral

argument or permitting a full, fair, and meaningful hearing on the issues raised in the Complaint.

On December 4, 2001, on Docket Number 01-1884. Mr. Rodriguez, Esq. filed Petition for Rehearing En Banc, based on three situations regarding the Panel's unpublished opinion of November 28, 2001: "(i) the Panel overlooked material facts, the Virginia Code, and Virginia Supreme Court precedent; (ii) the Panel's opinion regarding the standard of proof and use of Virginia's Long Arm Statute when there has been neither discovery nor an evidentiary hearing, is in conflict with decisions of the United States Supreme Court, this court, and holdings of all the other Circuits; and, (iii) the proceeding involves a question of exceptional importance regarding the assurance of providing due process and equal protection of Virginia Code §54.1-3932 ("VA Attorney's Lien"), to a Virginia Attorney providing *Pro Hoc Vice* litigation and fiduciary service while "engaged in the practice elsewhere" outside of Virginia."

On January 18, 2002, on Docket 01-1884, the Petition for Rehearing En Banc was denied.

This Writ of Mandamus is appropriate to Respondents because no other court supervises and assures that the United States Court of Appeals for the Fourth Circuit, and the United States District Court for the Eastern District of Virginia complies with both the Constitutional and statutory mandate of 28 U.S.C. §

1738, granting full faith and credit to the law of the State of Virginia, thus the relief sought can only be obtained through this Supreme Court's supervisory role of the federal circuits.

B. RELEVANT FACTS

The Complaint was filed to enforce Mr. Rodriguez, Esq., Virginia Attorney's Lien: first under Virginia Code §8.01-328.1(1), against SSA Group because they had initiated contact and entered into both verbal and written first an hourly fee contracts, and then subsequently a superseding contingency fee agreement, to secure and assure themselves of the fiduciary and litigation management services of Mr. Rodriguez, Esq., as a Virginia attorney; and, second, under Virginia Code §8.01-328.1(4), to protect said Virginia Attorney's Lien against the intentional acts of tortuous interference by occurring outside of Virginia, but directed against Mr Rodriguez, Esq. while in Virginia, by SSA Group, and by Mr. Devis, while they both were engaged in a "persistent course of conduct" of benefitting from the fiduciary and *pro hoc vice* litigation management service of this Virginia attorney.

The District Court, based on *ex parte* communications with influential and connected SSA Group, considered only the initial hourly contract. The District Court repeatedly refused to permit any discovery or meaningful hearing, and ignored the Va. Bar Legal Ethics Opinion and subsequent contingency fee con-

tract, the VA Attorney's Lien, or the tortuous acts directed into Virginia. The District Court thereby dispose of all the claims with respect to all the parties for lack of personal jurisdiction, without prejudice. The U.S. Court of Appeals for the Fourth Circuit affirmed.

REASONS FOR GRANTING THE WRIT OF MANDAMUS

i. Summary of Overlooked Facts and Laws

First, the Court of Appeals and the District Court overlooked both material facts and the Virginia Supreme Court precedent of *Hughes v. Cole* 251 Va. 3, 465 S.E.2d 820(1996), and *Peninsula Cruise, Inc. v. New River Yacht Sales Inc.*, Sup. Ct. of Virginia Record No. 980728, Feb. 26, 1999 __VA. ___ (1996), regarding the controlling effect of the VA Attorney's Lien, and Va Bar Ethics Opinion, *see Allstate Insurance v. West Virginia State Bar*, 4th Cir. No. 98-1537, November 30, 2000, and thereby has failed to enforce and protect Mr. Rodriguez, Esq.'s equity interest in his contingency fee contract pursuant to Virginia Code §8.01-328.1(A)(1) and (4). *In re Funk*, 2 F.Supp. 555 (W.E. Va 1931), *aff'd sub nom. Ruebush v. Funk*, 63 F2d 170 (4th Cir, 1933).

Second, the Court of Appeals and the District Court overlooked the "persistent course of conduct" of SSA Group beginning with initiating contact and entering into a contingent fee contract with Mr. Rodri-

guez, Esq., so to gain the "benefits and protections" of Virginia law by assuring Mr. Rodriguez Esq.'s fiduciary duty. VA Bar Ethics Opinion (A-3). *Montavon v. United States*, 864 F. Supp 519 (E.D. Va. 1994).[4]

Third, the Court of Appeals and the District Court overlooked that Mr. Devis undertook a "persistent course of conduct" at all time specifically understanding and accepting that he served as agent of Mr. Rodriguez, Esq., and specifically waiving any rights under Colombian law to gain "benefits and protections" of the laws of Virginia.

Fourth, the Court of Appeals and the District Court overlooked that SSA Group and Mr. Devis, while "engaged in persistent course of conduct" in using the fiduciary services of a Virginia attorney, undertook acts of breach and tortuous interference outside of Virginia,

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[4]The following from the transcript of the hearing of December 21, 2000, confirm that the District Court used SSA Groups *ex parte* arguments, and did not either read the facts or the gravamen of the Complaint:

Mr. Rodriguez: My office has been in Alexandria since 1979. . . .

The Court: Okay. Are you a Colombian citizen or —

Mr. Rodriguez: No, I am a U.S. citizen.

The Court: U.S. citizen, Virginia resident?

Mr. Rodriguez: Virginia resident, U.S. citizen. . .Member of the Virginia Bar. . . . And the reason why this was all very pivotal [was because SSA Group] needed the fiduciary and fidelity of an American lawyer which they could control.

directed at Mr. Rodriguez, Esq.'s equity right in his VA Attorney's Lien, *Katopodis v. Liberian S/T Olympic Sun*, 282 F.Supp 369 (E.D. Va 1968).

Fifth, the Court of Appeals and the District Court overlooked that the District Court intentionally and repeatedly failed to provide any full, fair, and meaningful hearing on the issue of the full faith and credit issue

ii. Enforcement and protection of Virginia Attorney's Lien

The Court of Appeals and the District Court's opinion are in conflict with Article IV, section 1, and 28 U.S.C. § 1738, and decisions of the United States Supreme Court in *Erie R.R. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817 (1938), and *Calder v. Jones* 465 U.S. 783 (1984), this court opinion in *English & Smith v. Metzger*, 901 F.2d 36, 39 (4th Cir. 1990)[5], and *Superfos Investments Ltd. v. FirstMiss Fertilizer*, Inc., 774 F.

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[5] Although this case did not involve consideration of rights under VA Attorney's Lien, because this contract was between attorneys, it is controlling precedent since this court there found personal jurisdiction present due to the nonresident attorney in California initiating the relationship of retaining a Virginia attorney, thus the nonresident for purposes of Virginia's long arm statute transacted business in Virginia. See also *Masselli & Lane, PC, v. Miller & Schuh, PA, et al.*, 4th Cir No. 99-2440, 2000 U.S. App. LEXIS 11932 (May 30, 2000).

Supp. 393, 397 (E.D. Va. 1991)(citing *I.T. Sales, Inc. v. Dry*, 222 Va. 6, 278 S.E.2d 789 (Va. 1981), and holdings of the other Circuits regarding the validity of a State's "minimum contacts" long arm statute; and these conflicts are not addressed in the opinion.

"As a federal court sitting in diversity of citizenship litigation, our duty under *Erie v. Tompkins* principles is of course to conform to [Kansas] substantive law." *Stauth v. National Union Fires Ins. Co. of Pittsburg*, 236 F3rd 1260, 1267 (10th Cir. 2001). In the absence of definative direction form the highest court of the state of Kansas, we "must predict the course that body wold take if confronted with the issue." *Id.; see also Carl v. City of Overland Park*, 65 f.3rd 866, 872 (10th Cir. 1995).

In *Hughes v. Cole, supra*, the Supreme Court of Virginia held that the language of VA Attorney's Lien Statute, "**is broad and permits no interpretation limiting the benefits of the statute to Virginia lawyers**. . . ."(Emphasis added)

This benefit of enforcing and protecting a VA Attorney's Lien is logically granted to a Virginia attorney providing services outside of Virginia, given

that he is at all times controlled by the Virginia Code of Professional Responsibility.[6]

In *Erie R.R. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817 (1938), which was brought in federal district court because of diversity of citizenship of the litigants—no federal issue was involved, the Supreme Court held that in diversity cases the federal district courts are bound to follow the substantive law of the state in which the court is sitting. Put in the simplest terms, the *Erie* doctrine as developed by the Court since 1938 requires the federal court to apply state substantive laws in determining any issue or claim which has its source in state law. *Calder v. Jones*, 465 U.S. 783 (1984); *Burger King v. Rudzewicz*, 471 U.S. 462 at 473 (1985); *Wein Air Alaska v. Brandt*, 195 F.3d 208 (5th Cir. 1999); *Reynolds v. International Amateur Athletic Fed'n*, 23 F.3d 1110, 1116 (6th Cir. 1994); *John R. Neal and Lea a. Neal v. Sjef Janseen*, 6th Cir. U.S. Ct of App. Docket No. 98-00119, Elect cite: 2001 Fed App 0379P(6th Cir.)(October 23, 2001); *Dollar Sav. Bank v. First Sec. Bank of Utah, N.A.*, 746 F.2d 208 (3d Cir 1984);

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[6]The State of Virginia has the undisputed interest in protecting its attorneys ability to be paid for legal services rendered is para mount–there is no contrary interest in either Washington or Idaho or Colombia, to suggest that Virginia policies should not control.
See In the Matter of Istem, Inc. Respondent, v. Chemical Bank Respondent, and Wilkie Farr Gallagher, Appellant, 78 N.Y.2d 342, 581 N.E.2d 1042, 575 N.Y.S.2d 79[illegible] (1991).

General Electric Company v. Deutz AG, 3rd Cir. U.S. Ct of App. Docket No. 00-2387 (October 31, 2001).

In this area (diversity), the *Erie* doctrine requires application of state law not only on issues that are conventionally classified as substantive, but too on issues conventionally classified as procedural where such issues "substantially affects the outcome" of the litigation. *Chavez v. Southern Pac. Transp. Co.*, 413 F.Supp 1203 (E.D. Calif 1976).

Justice Frankfurter in *Guaranty Trust Co v. York*, 326 U.S. 99, 65 S.Ct 1464 at 1470 (1945), wrote of the *Erie* decision, that,

> The intent of the decision was to insure that, in cases where a federal court is exercising jurisdiction solely because of the diversity of citizenship of the parties, the outcome of the litigation in the federal court should be substantially the same, so far as legal rules determine the outcome of litigation, as it would be if tried in a state court.

Consequently, given the intent and wording of the Virginia's Long Arm Statute, VA Attorney's Lien, the VA Bar Ethics Opinion, and the controlling precedent of the Supreme Court of Virginia in *Hughes v. Cole*, ***supra***, and ***Peninsula Cruise, Inc. v. New River Yacht Sales Inc.***, ***supra.***, personal jurisdiction would have been found if filed in the Court's of Virginia,

therefore the District Court and the Court of Appeals and the District Court's determination are in error.

iii. **Lack of Meaningful Hearing.**

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time in a meaningful manner.'" *Mathews v. Elridge*, 424 U.S. 319, at 333 (1967)(citation omitted).

Specifically, due process requires that Mr. Rodriguez, Esq.: (1) be entitled to fact finding based on a record produced before the District Court, and not *ex parte* discussions; (2) be allowed to make arguments regarding the applicability of his VA Attorney's Lien and VA Ethics Opinion; and (3) has the right to an individualized determination on his claims under his VA Attorney's Lien and VA Bar Ethics Opinion. *See Abdulai v. Ashcroft*, 239 F.3d 542 at 549 (3rd Cir. 2001).

Because none of the above requirements were met by the District Court, Mr. Rodriguez's right to due process and equal protection under the laws of Virginia were violated. For example:

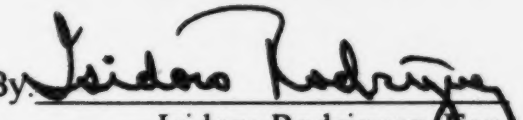
During oral argument on SSA Groups motion to dismiss on December 22, 2000, the Hon. Judge James C. Cacheris, specifically interrupted and prevented Mr. Rodriguez, Esq. from discussing the two theories of the Complaint, i.e. enforcement of his Attorney's Lien based on the contingence fee contracts of December, 1990 with SSA Group, and tortuous interference with rights under his VA Attorney's Lien.

Regarding the proceedings concerning Mr. Devis, neither the Report and Recommendation of Hon. Magistrate Judge Theresa Carroll Buchanan (A-262), nor the Final Order District Judge Gerald Bruce Lee (A-248), gave any consideration to either gravamen of the Complaint or the Virginia Code and Virginia Supreme Court precedent regarding the enforcement and protection of Mr. Rodriguez's Virginia Attorney's Lien.

CONCLUSION

For the foregoing reasons, this Court should issue a writ of mandamus to the Court of Appeals for the Fourth Circuit, and the District of Colombia of the Eastern District of Virginia, Alexandria, Division, directing that a full, fair and meaningful hearing shall be held on the Virginia Code based claims so to assure providing due process and equal protection of Virginia Code §54.1-3932 ("VA Attorney's Lien"), to a Virginia Attorney providing *Pro Hoc Vice* litigation and fiduciary service while "engaged in the practice elsewhere" outside of Virginia.

Respectfully submitted,

By: 

Isidoro Rodriguez, Esq.
Petitioner in Pro Per
Member of Supreme Court Bar
THE RODRIGUEZ LAW FIRM
2304 Farrington Avenue
Alexandria, Virginia 22303-1520
E-Mail: irodrig@metrotel.net.co
(703)960-0225

World Trade Center-Barranquilla
Calle 76 No. 54-11, Suite 313
Barranquilla, Colombia, S.A.
011-5753-480001

APPENDIX

FULL FAITH AND CREDIT CLAUSE:

Article IV, Section 1, provides as follows:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof."

FULL FAITH AND CREDIT FEDERAL STATUTE

28 U.S.C.A. § 1738 (West 2000), provides in pertinent part, that the Acts of the legislature of any State "shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken."

VIRGINIA STATUTES CITED:

Virginia Code § 54.1-3932. Lien for fees.

Any person having or claiming a right of action sounding in tort, or for liquidated or unliquidated damages on contract, may contract with any attorney to prosecute the same, and the attorney shall have a lien upon the cause of action as security for his fees for any services rendered in relation to the cause of action or claim. When any such contract is made, and written notice of the claim of such lien is given to the opposite party, his attorney or agent, any settlement or adjustment of the cause of action shall be void against the lien so created, except as proof of liability on such cause of action. . . .

Virginia Code § 54.1-3910. Organization and government of Virginia State Bar.

. . . . The Virginia State Bar shall act as an administrative agency of the Court for the purpose of

investigating and reporting violations of rules and regulations adopted by the Court under this article. All advisory opinions issued by the Virginia State Bar's Standing Committees on Legal Ethics and Unauthorized Practice of Law shall be incorporated into the Code of Virginia pursuant to § 9-77.11:02.

Virginia Code § 8.01-328.1.

When personal jurisdiction over person may be exercised.

A. A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's:

1. Transacting any business in this Commonwealth;...;

4. Causing tortuous injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly . . .engages in any other persistent course of conduct, or derives substantial revenue from . . . services rendered, in this Commonwealth;. . .

[SEAL]
50 Years Public Service
Virginia State Bar
1938-1988

VIRGINIA STATE BAR
Tenth Floor, Ross Building, 301 East Main Street
Richmond, Virginia 2319 (804)786-2061

(804)736-5966 (Voice/TDD)

STANDING COMMITTEE ON LEGAL ETHICS

February 27; 1990
PERSONAL AND CONFIDENTIAL

Isidoro Rodriguez C., Esquire
Calle 84 No. 56-51
Piso 2, Oficina 4
Barranquilla, Colombia S.A.

Re: Legal Ethics Opinion # 1325

Dear Mr. Rodriguez:

I am writing in response to your letter dated January 3, 1990, requesting an informal advisory opinion from the Virginia State Bar Standing Committee on the Legal ethics ("committee").

You have advised that, although you are a member of the Virginia State Bar, you reside and practice in a South American country. You further indicate that you entered into an agreement, which was executed in Idaho, to represent a foreign corporation in the negotiation, settlement, and/or litigation against a foreign government resulting from the corporation's claim as finder of a shipwreck which contained an estimated $3 billion in treasure. The agreement provided for

an hourly fee rate, costs, and monthly detailed invoices and was affirmed by the corporation's Board of Directors which also named you as Legal Representative for the corporation. You have described for the committee that a Legal Representative In the country in which you practice is distinct from an attorney at law and is the commercial. representative for the company in that country with all of the corporate powers of the Board of Directors and all, of the potential individual liability. Furthermore, such a Legal Representative is not required to be an attorney at law. Subsequent to those corporate actions, you were authorized to bring a legal action against the foreign government and you authorized your then-law partner, which partnership has subsequently been dissolved, to file the suit as Attorney of Record. The facts you have provided indicate that the suit was filed shortly after you authorized your partner to do so.

You indicate that, although much time has been expended on the case and the corporation repeatedly expressed satisfaction with the work being performed by your firm, the corporation has failed to comply with its contractual agreement to pay invoices after they were presented. Specifically, the corporation agreed to pay $10,000 approximately two months after suit was filed and an additional $50,000 within 30 days thereafter. The first payment ($10,000) was made as scheduled, but no further payments have been made by the corporation. Subsequent to that first payment, the corporation requested a contingent fee agreement be submitted for consideration; such a contract was prepared and submitted, but the corporation has not responded.

In addition to the failure to pay fees, you indicate that the corporation, without your knowledge, sent a defamatory letter against the foreign government which then prepared an official protest to the United States Embassy. You indicate that the letter accused the government and unnamed officials of

criminal acts, subjecting you, as the corporation's Legal Representative, to civil liability and both you and your former law partner to physical danger.

As a result of both issues, failure to pay fees and costs owed and the defamatory latter, you requested that the corporation retain a new Legal representative and a new attorney. You indicate that to date you have not received any response from the corporation's Board of Directors.

Finally, you advise that under the law and professional norms of the foreign government, your former lev partner has a right to unilaterally and voluntarily withdraw from the litigation, without any requirement to seek permission of the trial court. You indicate that he may also file a civil suit against the corporation for monies owed during or after litigation. Your former partner has not exercised those rights pending your receipt of this informal advisory opinion.

You have asked that the committee opine as to the propriety of your renunciation of your fiduciary appointment as Legal Representative to the corporation in view of the non-payment of costs and fees owed and of the defamatory letter sent by the corporation to the foreign government. You have further inquired as to the propriety of your instituting suit against the corporation for their non-payment of fees and costs owed.

The appropriate and controlling rules relative to your questions are DR l-102(A)(4) which prohibits a lawyer from engaging "in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on [the] lawyer's fitness to practice law"; DR 2-l08(B)(2, 3, and 4) which proscribe the conditions which permit a lawyer to withdraw from representing a client; DR 2—108(C) which directs that counsel of record in a court proceeding may not withdraw except by leave of court after notice to the client of the time

and place of a motion for leave to withdraw; and DR1-102(B) which instructs that a lawyer admitted to practice in Virginia is subject to the Virginia Code of Professional Responsibility although engaged In practice elsewhere, unless disciplinary rules of the foreign jurisdiction permit the activity [emphasis added].

The committee is of the opinion that the provisions of DR l-l02(A)4) embrace far more than an attorney's conduct in the context of an attorney/client relationship. Thus, the committee opines that when an attorney assumes the responsibility of acting as a fiduciary and violates his or her duty in a manner that would justify disciplinary action had the relationship been that of attorney/client, the attorney may be properly disciplined pursuant to the Code of Professional Responsibility. The committee thus specifically adopts the conclusions reached in ABA Formal Opinion 336. See also: State. v Freeman, 229 Kan. 639, 629 P.2d 716 (1981); and Committee on Professional Ethics v. Gross, 322 N.V2d 82 (Iowa 1982).

Virginia Disciplinary Rule 2-108(B), subsections (2), (3), and (4), directs that a lawyer may withdraw from representing a client if (2) the client persists in a course of conduct involving the lawyer's services that the lawyer reasonably believes is illegal or unjust; (3) the client fails to fulfill an obligation to the lawyer regarding the lawyer's services and such failure continues after reasonable notice to the client; or (4) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client. The committee is of the opinion that, under the facts you have provided, it would n6t be improper to move to withdraw as Legal Representative for the corporation. See also LEO #974. The committee understands, however, from your recitation of the facts, that such permission of the court is not required in the foreign country in which you practice. Under those circumstances, the committee directs your attention to

DR 1-102(B) which, as noted above, would control. Therefore, if the professional norms in that country permit unilateral and voluntary withdrawal from representation without authorization by the court, it would not be improper for you to act accordingly.

The committee has earlier opined that there is no disciplinary rule ethically prohibiting an attorney from bringing an action against his client for past-due attorney's fees end costs. See LEOs #974 and 995. Guidance I available under Ethical Consideration 2-25 which urges that a lawyer should not sue a [current] client for a fee unless necessary to prevent fraud or gross imposition by the client. See LEO 11117. But see LEOs #1230 and 1257.

This opinion is advisory only, based only on the facts you presented and not binding on any court or tribunal.

Very truly yours,

Kathleen O'Brien

Encl.
cc: C. Torrence Armstrong, Esquire
Willard M. Robinson, Jr., Esquire
Susan B. Spielberg, Esquire

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
January 18, 2002

No. 01-1884
CA-00-1523-A

ISIDORO RODRIGUEZ, Esq
Plaintiff - Appellant

v.

JACK HARBESTON; SEA SEARCH ARMADA; ARMADA COMPANY; IOTA PARTNERS; DANILO DEVIS PEREIRA

Defendants - Appellees

On Petition for Rehearing En Banc

The appellant's petition for rehearing en banc was submitted to this Court. As no member of this Court requested a poll on the petition for rehearing en banc,

IT IS ORDERED that the petition for rehearing en banc is denied

For the Court,

/s/ Patricia S. Connor

_____

CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01—1884

ISIDORO RODRIGUEZ, Esq.,
Plaintiff - Appellant,

versus

JACK HARBESTON; SEA SEARCH ARMADA; ARMADA
COMPANY; IOTA PARTNERS; DANILO DEVIS PEREIRA,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Gerald Bruce Lee, District Judge. (CA-00-1523-A)

Submitted: November 9, 2001 Decided: November 28, 2001

Before LUTTIG, MOTZ, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Isidoro Rodriguez, Appellant Pro Se. R.Harrison Pledger. Jr., Bernard G. Feord, Jr., PLEDGER & FEORD, P.L.C., McLean, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Isidoro Rodriguez appeals the district court orders dismissing his complaint for lack of personal jurisdiction. We review de novo the district court's legal conclusions concerning personal jurisdiction. To the extent that the district court's conclusions are based on findings of fact, however, such findings should not be disturbed unless clearly erroneous. Mylan Lab., Inc. V. Akzo. N.y., 2 F.3d 56, 60 (4th Cir. 1993). Rodriguez bears the burden of showing by a preponderance of the evidence that jurisdiction existed. In re Celotex Corp., 124 F.3d 619, 628 (4th Cir. 1997).

We have reviewed the record and the district court's findings and legal conclusions and find no error. Accordingly, we affirm on the reasoning of the district court. See Rodriguez v. Harbeston, No. CA-00-1523-A (E.D. Va. Dec. 21, 2000 & June 5, 2001). We deny Rodriguez's motion seeking certification of a question from the Supreme Court of Virginia. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court, and

argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

ISIDORO RODRIGUEZ, ESQ.,)		
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-1523-A
	)	
DANILO DEVIS PEREIRA,)		
	)	
Defendant.	)	

ORDER

THIS MATTER is before the Court on the April 25, 2001 Report and Recommendation of Magistrate Judge Theresa Carroll Buchanan addressing Plaintiff's Motion for Stay of Default Proceeding and Motion for Leave to Conduct Nonparty Depositions.

Federal Rule of Civil Procedure 72(b) requires a district judge to whom a magistrate's Report and Recommendation is assigned to "make a de nova determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule." FED. R. CIV. P. 72(b). Plaintiff has made a timely written objection to the magistrate judge's report and recommendation dismissing Plaintiff's claims against Defendant Danilo Devis Pereira for lack of personal

jurisdiction. Therefore, the issue before the Court is whether the exercise of personal jurisdiction over Defendant is proper in that this Court may not exercise personal jurisdiction over Defendant. Therefore, the Court adopts the Report and Recommendation of Magistrate Judge Buchanan. Accordingly, Plaintiff's complaint is DISMISSED WITHOUT PREJUDICE.

PROCEDURAL AND FACTUAL BACKGROUND

Plaintiff Isidoro Rodriguez, Esquire, a member of the Virginia bar, alleges that he was contacted in 1988 and asked to represent Jack Harbeston, Sea Search Armada ("SSA"), Armada Company, and IOTA Partners in payloads of sunken treasure ships located off the coast of Columbia. (Compl. ¶91 13-18.) Through various agreements, Plaintiff's clients authorized Plaintiff to file and prosecute a lawsuit in Columbia on behalf of SSA, a limited partnership with an interest in the "San Jose," a sunken Spanish galleon. *(Id.* ¶91 20-22, 26-32.) After negotiating an appropriate legal strategy, Plaintiff negotiated with Danilo Devis Pereira, a Columbian attorney, whereby Mr. Pereira assisted Plaintiff in the prosecution of SSA's case in Barranquilla, Columbia. *(Id.* ¶91 23-26.) Plaintiff conducted some work from his office in Virginia, but also established a residence in Barranquilla, Columbia during his business relationship with Mr. Pereira; Plaintiff spent a substantial amount of time in Columbia. *(Id.* ¶ 22; P1. Br. in Supp. of Mot. for Leave to Conduct Deps.)

Plaintiff and Mr. Pereira first entered into an oral agreement to perform jointly the galleon work. Plaintiff and Mr. Pereira subsequently entered into two written agreements, which

were executed in Columbia, whereby the parties modified the division of the proceeds from their work. *(Id.* ¶91 43, 45.) Plaintiff alleges that Mr. Pereira breached their contractual agreements and conspired with Plaintiff's former clients to cause tortious injury to Plaintiff.

Plaintiff filed this action against Jack Harbeston, Sea Search Armada, Armada Company, IOTA Partners, and Mr. Pereira on September 12, 2000. During the period between November 16, 2000 and November 22, 2000 all of the individuals and entities except Defendant Danilo Devis Pereira filed motions to dismiss for lack of personal jurisdiction. Judge James C. Cacheris granted the motions on December 21, 2000.[1] Judge Cacheris held that Plaintiff's Virginia State Bar affiliation alone did not amount to a sufficient connection to Virginia by the defendants to permit the court to exercise personal jurisdiction over the defendants. (Pl.'s Br. in Supp. of his Mot. for Leave to Conduct Nonparty Deps. at 6 n.8.) Judge Cacheris' ruling left Defendant Danilo Devis Pereira ("Defendant") as the sole remaining defendant in this case.

On February 15, 2001, having recognized Defendant's failure to appear in this case, Judge Claude M. Hilton scheduled a hearing for March 16, 2001 to consider whether to enter a default against Defendant. Plaintiff then filed a motion to stay the default proceeding, and noticed the motion for the March 16th hearing date. At the hearing on the issue of entry of default, Magistrate Judge Theresa C.

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[1]Plaintiff appealed these dismissals to the Fourth Circuit Court of Appeals on January 16, 2001.

Buchanan took the issue of entry of default and Plaintiff's motion for stay under advisement and asked Plaintiff to submit to the court a memorandum addressing, among other things, the grounds for the Court's personal jurisdiction over Defendant. On March 29, 2001, Plaintiff filed a motion for leave to conduct nonparty depositions, which he noticed for a hearing on April 6, 2001. Plaintiff's accompanying memorandum included arguments in support of his motion for depositions and provided the requested information regarding the basis of the court's jurisdiction over Defendant. Judge Buchanan took Plaintiff's motions under advisement before the noticed hearing and ruled on the papers.

Judge Buchanan issued her Report and Recommendation on April 25, 2001. Judge Buchanan found that personal jurisdiction over Defendant was not proper in this Court because Defendant's contacts with Virginia do not satisfy any of the grounds for personal jurisdiction articulated in Virginia's long—arm statute. Therefore, Judge Buchanan recommended that Plaintiff's case be dismissed without prejudice. Plaintiff objects to Judge Buchanan's recommendation.

DISCUSSION

Standard of Review

Rule 12(b) (2) of the Federal Rules of Civil Procedure permits dismissal of an action in which the forum court lacks the requisite personal jurisdiction. FED. R. Civ. P. 12(b) (2). The Court must consider the pleadings and affidavits in a light most favorable to the plaintiff—here,

Mr. Rodriguez. *See Compuserve, Inc. v. Patterson*, 89 F.3d 1257, 1262 (6th Cir. 1996) . For a 12(b) (2) motion, the Court does not weigh the controverting assertions of the party seeking dismissal; the Court need only find that Plaintiff has made a prima facie showing of jurisdiction. See id.

Analysis

Personal jurisdiction over Defendant is not proper in this forum. Under Virginia law, the Court may exercise personal jurisdiction over a party if: (1) the facts and circumstances of the case fall within the reach of the Virginia's long-arm statute. *see* VA. CODE 8.01—328.1(A); and (2) the exercise of personal jurisdiction does not offend due process. *See, e.g., Heathmount A.E. Corp. v. Technodome.com*, 106 F. Supp. 2d 860, 864 (E.D. Va. 2000); *Robinson v. Egnor*, 699 F. Supp. 1207, 1211-12 (E.D. Va. 1988) (citing *Blue Ridge Bank v. Veribanc*, 755 F.2d371, 373 (4th Cir. 1985)). If jurisdiction is not appropriate under the first prong of the test, the Court need not analyze the facts of the case under the second prong of the test.

The Court finds that the exercise of personal jurisdiction over Defendant is not proper in Virginia because the facts of this case do not fall within the reach of the long-arm statute. The Virginia long-arm statute provides in relevant part:

A. A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's:

1. Transacting any business in this Commonwealth;

2. Contracting to supply services or things in this Commonwealth;

3.Causing tortious injury by an act or omission in this Commonwealth;

4.Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this Commonwealth.

VA. CODE § 8.01-328.1. Plaintiff asserts that personal jurisdiction over Defendant is proper under (A) (1) and A(4) of Virginia's long-arm statute. (Pl.'s Exceptions to Rpt. and Recommendation at 5.) However, the circumstances surrounding this case do not permit jurisdiction under either subsection.

There is no evidence that Defendant transacted business in Virginia. See VA. CODE § 8.01-328.1(A) (1). There is no indication that Defendant ever traveled to Virginia or physically occupied an office here.[2] In fact, Plaintiff only argues that Defendant litigated and negotiated with the

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[2] The Letterhead for "Devis & Rodriguez, Attorneys andCounselors at Law" bears a Columbian address, (Compl. Ex. 7);Defendant and Plaintiff signed the January 3, 1991, March 15,1991, and May 6, 1991 legal services agreements in Columbia;Plaintiff and Defendant also signed Plaintiff's powers ofattorney in Columbia *(Id.* Ex. 15, 17.), etc.

Republic of Columbia while *Plaintiff* resided in Virginia. The basis of Plaintiff's argument that Defendant "transacted business" in Virginia is Defendant's association with Plaintiff while Plaintiff was in Virginia. However, Defendant maintained his offices in Columbia and performed his duties as Plaintiff's associate while in Columbia. Moreover, the evidence before the Court demonstrates that a great deal of Defendant's contacts with Plaintiff took place while Plaintiff himself was in Columbia. (Compl. Exs. 7 10 11 13 15 17, etc.) Mere association with Plaintiff, a Virginia resident, does not amount to "transacting . . . business" in this Commonwealth." VA. CODE § 8.01—328.1(A) (1).

Jurisdiction over Defendant is also improper on the grounds that Defendant supposedly caused tortious injury in this Commonwealth by an act or omission outside this Commonwealth while Defendant regularly conducted business, or engaged in any other persistent course of conduct, or derived substantial revenue from services rendered, in Virginia. See VA. CODE § 8.01-328.1(A) (4). Defendant's alleged breach of his contract, breach of fiduciary duty, and interference with Plaintiff's lien may amount to "causing tortious injury" in this forum; however, Defendant did not engage in any persistent course of conduct in Virginia. Again, Plaintiff argues that Defendant's association and agency with Plaintiff amounts to a persistent course of conduct from which Defendant derived "substantial revenue." There is no indication that Defendant engaged in any continuous or systematic contact with Virginia, either through business or otherwise. Defendant's principal place of business was not in Virginia, nor did Defendant seek out Virginia as a business forum. Plaintiff

extended himself through Defendant so that Plaintiff could provide services in Columbia, not vice versa. Plaintiff notes that Defendant acted as agent for Plaintiff. (Pl.'s Exceptions at 8.) Therefore, Plaintiff availed himself of an opportunity to transact business in Columbia through his agent; Defendant did not use Plaintiff as an agent to conduct business in Virginia. *See, e.g., Hanson v. Denckla, 357* U.S. 231, 253 (1958) (holding that the principal inquiry is whether the nonresident purposefully availed himself of the privilege of conducting business in the forum state, thus invoking the benefits and protections of the forum state's laws) . Moreover, Defendant did not have continuous or persistent contact with Virginia to perform revenue-producing services here. See VA. CODE § 8.01—328.1(A)(4) . Instead, Plaintiff formed the relationship with Defendant so that Plaintiff could have a business contact and means for Plaintiff to monitor his revenue-producing business relations in Columbia. Therefore, there is no indication that Defendant regularly associated himself with Virginia to solicit business here or derive revenue from Virginia. *See id.* Consequently, this Court may not properly exercise personal jurisdiction over Defendant.

Plaintiff argues that it should be clear that Defendant has sufficient contact with Virginia to warrant the exercise of jurisdiction over Defendant because Plaintiff has a viable claim for an attorney's lien under Virginia law. (Pl.'s Exceptions at 10—12.) However, Plaintiff conflates a finding of a viable cause of action with a finding of proper jurisdiction. *(Id.* at 11-12 (arguing that the magistrate judge did not have jurisdiction to review the State Bar's Legal Ethics Opinion that Plaintiff could sue to protect his statutory attorney's lien); *id.* at 13-14. (arguing that

Virginia's long-arm statute necessarily permits personal jurisdiction to enforce Virginia' s attorney' s lien) .) Findings of a viable cause of action and proper jurisdiction are separate and distinct. *See* FED. R. Civ. P. 12(b) (2), 12(b) (6) (permitting dismissal of a claim on the separate, and alternative, grounds that (1) jurisdiction is not proper over the alleged offender, or (2) the pleader has not pled facts supporting a claim for which relief can be granted) . Therefore, it is not sufficient that Plaintiff has demonstrated that he may be entitled to judgment on his claim to enforce his attorney's lien. (Dec. 6 Affidavit of Isidoro Rodriguez. Ex. 6: Virginia State Bar Legal Ethics Opinion #1325 at 3 (opining that it would not be ethically prohibited for an attorney to bring an action against his client for past—due attorney's fees and costs).)[3] Plaintiff must ***also*** demonstrate that jurisdiction over Defendant is proper in this Court. As indicated above, Plaintiff has not demonstrated that

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[3] Notably, Plaintiff cites the Virginia Bar Ethics Opinion as indicating that the Virginia Bar advised Plaintiff that he could sue Defendant, Plaintiff's former "law partner," for Plaintiff's attorney's lien. (Pl.'s Exceptions at 12 —13.) However, the Ethics Opinion demonstrates that Plaintiff did not alert the Bar of his desire to sue Defendant, only of his desire to sue his former "client." (Ethics Opinion #1325 at 3.) Nothing in the Ethics Opinion makes reference to the exercise of jurisdiction over Defendant, or that suit would be proper against Defendant in any particular jurisdiction, if at all. In fact, the Bar was under the impression that Defendant would bring a suit similar to Plaintiff's against the former client, not that Defendant would be a named defendant in Plaintiff's suit. *(Id.* at 2.)

jurisdiction over Defendant is proper here.

For these reasons, the Court finds that the recommendation of dismissal is supported by Defendant's lack of sufficient contacts with this jurisdiction. The Court further finds that amendment to the pleadings will not cure the jurisdictional deficiency. Therefore, it is hereby

ORDERED that Magistrate Judge Buchanan's Report and Recommendation is ADOPTED. It is further

ORDERED that Plaintiff's claims against Defendant are

DISMISSED WITHOUT PREJUDICE.

The Clerk is directed to forward a copy of this Order to *pro* se Plaintiff and Defendant.

Entered this 5th day of June, 2001.

----------/s/----------
Gerald Bruce Lee
United States District Judge

Alexandria, Virginia
06/05/01

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

ISIDORO RODRIGUEZ,ESQ)
)
Plaintiff,)
)
v.)Case No CA-001523-A
)
JACK HARBESTON,ET AL.)
)
Defendants.)

ORDER

For the reasons stated in open Court, it is hereby ORDERED that:

1. The Motions to Dismiss of Defendants Jack Harbeston, Sea Search Armada, Armada Company, and Iota Partners are **GRANTED** without prejudice;

2. Plaintiff's Motion for Sanctions under Rule 11 is **DENIED** as moot;

3. the action against Defendant Danilo Devis Pereira remains; and

4. the Clerk shall forward copies of this Order to all parties and counsel of record.

December 21st, 2000
Alexandria, Virginia

/S/
UNITED STATES DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

ISIDORO RODRIGUEZ, ESQ.)	
)	
Plaintiff,)	
)	
v.	)Civil Action No.00-1523-A
)	
DANILO DEVIS PEREIRA.[1])	
)	
Defendant.)	

REPORT AND RECOMMENDATION

The Court was faced with the matter addressed herein upon the plaintiff's filing of two motions. On March 7, 2001, plaintiff filed a "Motion Pursuant to Right to Due Process, Provisions of Inter-American Service Convention, and Federal Rules of Civil Procedure Effective December 1, 2000, for a Stay of Default Proceeding Pending Discovery of Non-Party Witnesses and Service of Process in Accordance with Said Treaty so to Assure Enforcement of a Default Judgment in the Republic of Colombia" (hereinafter, "Motion for Stay of Default Proceeding"). On March 29, 2001, plaintiff filed a "Motion for Leave to Conduct the Immediate Depositions of Nonparty Witnesses Regarding the Status of His Perfected Virginia Statutory

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[1] The former lead defendant, Jack Harbeston, was dismissed from the case.

Attorney's Lien" (hereinafter, "Motion for Leave to Conduct Nonparty Depositions"). The undersigned Magistrate Judge has taken both of these motions under consideration.

I. PROCEDURAL HISTORY

On September 12, 2000, plaintiff filed this action against defendants Jack Harbeston, Sea Search Armada, Armada Company, IOTA Partners, and Danilo Devis Pereira. During the period of November 16, 2001, through November 22, 2001, four of the five defendants - Jack Harbeston, Sea Search Armada, Armada Company, and IOTA Partners - filed motions to dismiss for lack of personal jurisdiction. On December 21, 2000, the Honorable James C. Cacheris, stating from the bench that the plaintiff's Virginia State Bar affiliation alone was not a sufficient connection to establish the Court's personal jurisdiction over the defendants, (Pl.'s Br. in Supp. of His Mot. for Leave to Conduct Nonparty Deps. p. 6 n.8), granted all four of these motions to dismiss, thereby leaving Danilo Devis Pereira as the sole remaining defendant in this case. On January 16, 2001, plaintiff appealed these dismissals to the Fourth Circuit Court of Appeals.

On February 15, 2001, having recognized defendant Pereira's failure to appear, the Honorable Claude M. Hilton scheduled a default hearing for March 16, 2001. On March 7, 2001, plaintiff filed his Motion for Stay of Default Proceeding, which he noticed for a hearing on March 16, 2001. At the hearing, Judge Buchanan took this motion under advisement and asked plaintiff to submit to the Court a memorandum addressing, among other things, the grounds for the Court's personal jurisdiction over the defendant. On March 29, 2001, plaintiff filed his Motion for Leave to

Conduct Nonparty Depositions, which he noticed for a hearing on April 6, 2001, and an accompanying memorandum containing both the arguments in support of this motion and the supplementary information requested by Judge Buchanan on March 16, 2001. Having decided to rule on the papers, the undersigned took this motion under advisement before the noticed hearing.

II. FACTUAL BACKGROUND

Plaintiff, a member of the Virginia Bar, alleges that he was contacted in 1988 and asked to represent the interests of the former defendants (Jack Harbeston, Sea Search Armada, Armada Company, and IOTA Partners) in payloads of sunken treasure ships located off the coast of Columbia. (Compl. ¶¶ 13-18.) Plaintiff claims that, through various agreements, he was authorized to file and prosecute a lawsuit in Columbia on behalf of former defendant SSA, a limited partnership with an interest in the *San Jose*, a sunken Spanish galleon. (Id.¶¶ 20-22, 26-32.) According to plaintiff, after developing an appropriate legal strategy, he negotiated an agreement with defendant Pereira, a Columbian attorney, whereby defendant assisted plaintiff in the prosecution of defendant SSA's case in Barranquilla, Colombia. (Id. ¶ ¶ 23-26.) Plaintiff alleges that defendant breached this agreement and conspired with the former defendants to cause further tortious injury to plaintiff. (Id. ¶¶ 60-64; Pl.'s Br. In Supp. Of His Mot. For Leave to Conduct Nonparty Deps. at 14-15.)

III. ANALYSIS

Upon a full review of the pleadings and other pertinent submissions, the undersigned Magistrate Judge finds, for the

following reasons, that the Court does not have jurisdiction over the defendant.

According to plaintiff, defendant has three contacts with the State of Virginia. First, defendant and plaintiff, a Virginia resident[2] and attorney, allegedly entered into an oral agreement whereby they associated for the purpose of providing legal services to defendant SSA in Columbia and agreed to equally split the costs of and proceeds from their work. (Compl. ¶¶ 23-25; Pl.'s Br. in Supp. of His Mot. for Leave to Conduct Nonparty Deps. at 13-14.) Pursuant to two subsequent written agreements, dated March 15, 1991, and May 6, 1991, which were executed in Columbia, the parties supposedly modified the division of proceeds from their work from a fifty-fifty split to a eighty— twenty split in favor of defendant. (Compl. ¶¶ 43, 45, Ex. 11, Ex 13.) Second, plaintiff claims that through this relationship, defendant benefitted financially from his business contacts to plaintiff, a Virginia resident and attorney. (Pl.'s Br. In Supp. Of His Mot. For Leave to Conduct Nonparty Deps. at 13-15) Finally, plaintiff contends that defendant breached their business agreement and a fiduciary duty owed thereunder as an agent of plaintiff, a Virginia resident and attorney. (Id. At 13, 15-16)

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[2] Although plaintiff claims to have been domiciled in Virginia during the pendency of his business relationship with defendant, he established a residence in Barranquilla, Columbia, in or around 1988, and obtained a Columbian resident visa in 1993. (Compl. ¶ 22; Pl.'s Br. in Supp. of His Mot. for Leave to Conduct Nonparty Deps. at 5.)

The burden is on the plaintiff to show by a preponderance of the evidence that the Court has personal jurisdiction over the defendant. This burden is carried by the satisfaction of a two-step inquiry. See Mylan Laboratories, Inc. v. Akzo, N.V., 2 F.3d 56, 60 (4th Cir. 1993); Roche v. Worldwide Media, Inc., 90 F. Supp.2d 714, 716 (E.D. Va. 2000) . First, the plaintiff must show that Virginia's long-arm statute reaches the defendant. Second, the plaintiff must show that the requested exercise of personal jurisdiction is consistent with the due process clause. See Heathmount A.E. Corp. v. Technodome.com, 106 F. Supp.2d 860, 864 (E.D. Va. 2000); America Online, Trio. v. Huang, 106 F. Supp.2d 848, 853 (E.D. Va. 2000); Rannoch, Inc. v. Rannoch Corp., 52 F. Supp.2d 681, 684 (E.D. Va. 1999).

Even assuming they have been accurately depicted by plaintiff, defendant's contacts with Virginia do not satisfy either prong of the personal jurisdiction inquiry. First, defendant's contacts do not satisfy any of the grounds for personal jurisdiction enunciated in Virginia's long-arm statute. See Va. Code § 8.01-328.1 (Michie 2000). Second, the Court's exertion of personal jurisdiction over the defendant would offend the "traditional notions of fair play and substantial justice," thereby violating the due process clause. International Shoe Co.v. Washington, 326 U.S. 310, 316 (1945). This is because the defendant did not reach into Virginia and purposefully avail himself of the laws of this jurisdiction. See id. at 319. Rather, plaintiff appears to have reached into Columbia for defendant to secure his services and perform work with him in Columbian courts. Therefore, plaintiff has not shown by a preponderance of the evidence that the Court has personal jurisdiction over the defendant.

IV. RECOMMENDATION

The undersigned Magistrate Judge therefore recommends that plaintiff's case be dismissed without prejudice on the ground that the Court does not have personal jurisdiction over the sole remaining defendant, Danilo Devis Pereira.[3]

V. NOTICE

The parties are advised that exceptions to this Report and Recommendation, pursuant to 28 U.S.C. § 636 and Rule 72(b) of the Federal Rules of Civil Procedure, must be filed within ten (10) days of its service. A failure to object to this Report and Recommendation waives appellate review of any judgment based on it.

The Clerk of the Court is directed to send a copy of this Report and Recommendation to all counsel of record, and to the defendant at the following address:

Danilo Devis Pereira
Abogado
Carrera 51 No 79-34
Oficina 403
Barranquilla, Colombia

/S/
THERESA CARROLL BUCHANAN
UNITED STATES MAGISTRATE JUDGE

April 25, 2001
Alexandria, Virginia

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[3] The undersigned Judge will hold plaintiff's Motion for Stay of Default Proceeding and Motion for Leave to Conduct Nonparty Depositions under consideration until the Court acts on this Report and Recommendation.